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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/174,042	10/16/1998	JURGEN HIRATH	ZTP-97-P-413	5077

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EXAMINER

ANDERSON, GERALD A

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/174,042

Applicant(s)

HIRATH ET AL.

Examiner

JERRY A ANDERSON

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 October 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 13 and 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- ☐ Interview Summary (PTO-413) Paper No(s) _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION***Response to Arguments***

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection. The applicant argues that Comstock has some difficulty maintaining an evacuated space. However, neither the newly cited Nakada reference nor the O'Leary reference share this difficulty. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The Examiner continues to believe that the technology or art involved in building vacuum insulated receptacles are a division of the technology or art used in building insulated receptacles and therefore what is known to one of ordinary skill in the art in the former is also known to one of ordinary skill in the later.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1, 3, 5, 7, 8, 10 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative

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relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: claim 1 the wall is defined as including an evacuated space. However, claim 1 also defines a tube with two ends one end sealed to a wall enclosing said space at an aperture in the wall. Since the other end of the tube is not accounted for in the claim. The other apertures, if the "at least one wall having an aperture" includes another aperture in another wall with a tube end attached, is not defined as sealed. Therefore the enclosed space as defined is not a sealed space but is open to the surrounding atmosphere.

The terms "given" and "corresponding" in claim 11 and 12 are ~~a~~ relative terms which renders the claim indefinite. The terms "given" and "corresponding" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-12, as presented, are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakada et al in view of and the teaching of Comstock, O'Leary and Schmidberger. Nakada is cited showing an insulated wall having covering layers 1 and 2, that can be "iron sheet", sealed along a profile 9 and 10 to enclose a space 3 filled with an insulating material 11. The Examiner considers stainless steel to be a form of "iron sheet" but cites O'Leary showing an evacuated receptacle using steel in its construction. Nakada shows at least one aperture 4 and a tube 12 apparently sealed to one wall at the aperture by a flange 10. Nakada fails to show a tube with a flattened end sealed to the wall at the aperture. Comstock is cited showing another vacuum insulated walls 1 with an annular or spool-like bridge 185-187, 206, 220, 221, 407 with enlarged annular portions 186 sealing the bridge to the covering layers of the insulating wall for the purpose of providing passage into and through the insulated wall. The making elements integral (claims 5, 6) or separable is an obvious matter of design choice within the ability of one having an ordinary skill in the art. Schmidberger is cited showing a space which comprises flanges and a tube which are taken to be integral. Since the references are from the same field of endeavor the purpose of Comstock, Schmidberger

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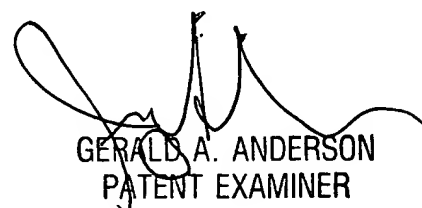
and O'Leary would have been obvious in the pertinent art of Nakada at the time of the invention it would have been obvious for one having an ordinary skill in the art to have modified Nakada with a tube having an annular flanges at one or both ends to provide passage through one or both covering layers of the insulated wall in view of Comstock, to have used steel in the construction of the covering layers of the insulating wall in view of O'Leary and the tube and flanges being integral in view of Schmidberger. The method of attachment of the tube to the covering layer, a beam welding process defined in claims 8-10, is not a patentable distinction in apparatus claims. It is noted that Schmidberger teaches welding the flanges of the spacers to covering layers of an insulating wall.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerry Anderson whose telephone number is 703 038 2202. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703 308 24668. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 3597 for regular communications and 703 306 4195 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 2197.

Jaa
November 18, 2002



GERALD A. ANDERSON
PATENT EXAMINER